

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SOLOMON AYODELE,

Plaintiff,

-against-

NEW YORK POLICE
DEPARTMENT, et al.

Defendants.
-----X

P. KEVIN CASTEL, District Judge:

On October 3, 2007, plaintiff commenced this action arising out of an alleged arrest without probable cause and an assault. An Amended Complaint was filed on October 15, 2007. On February 13, 2008, I referred the case to Magistrate Judge James C. Francis for general pretrial supervision. Magistrate Judge Francis set a date for the completion of all discovery of August 28, 2008. On or about August 5, 2008, defendants counsel wrote to Magistrate Judge Francis noting the plaintiff's failure to respond to interrogatories and document requests. In an Order docketed on August 6, 2008, Judge Francis ordered plaintiff to respond by August 30, 2008 and warned that the failure to provide the required discovery would lead to dismissal of the complaint. In a Report and Recommendation ("R & R") entered on the docket on November 10, 2008, Magistrate Judge Francis recommended that this Court dismiss the action for failure to prosecute and as a discovery sanction. The Magistrate Judge reviewed the factors outlined in Spencer v. Doe, 139 F.3d 107 (2d Cirr. 1998), and concluded, among other things, that defendants had been and would continue to be prejudiced and tht no less drastic sanction would be efficacious. He reviewed the circumstances of the delay

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4-20-09

07 Civ. 8573 (PKC)

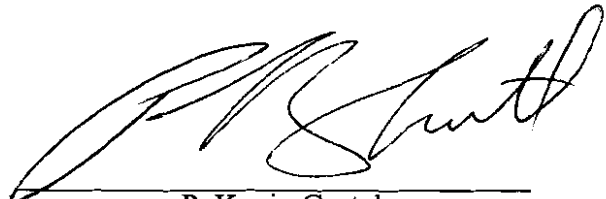
ORDER ADOPTING REPORT
AND RECOMMENDATION

and confirmed that plaintiff had been adequately warned. He engaged in the balancing required by Spencer.

The R & R advised the parties that they had ten days from service of the R & R to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. As of the date of this Order, no objections have been filed and no request for an extension of time to object has been made. The R & R expressly called petitioner's attention to Rule 72, Fed. R. Civ. P., and 28 U.S.C. § 636(b)(1). Plaintiff received clear notice of the consequences of the failure to object and has waived the right to object to the R & R or obtain appellate review. See Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.1992). No circumstances are presented which would cause this Court to depart from that rule in the interest of justice. Id.

The R&R is adopted in its entirety and the action is DISMISSED. The Clerk shall enter judgment for the defendants.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'P. Kevin Castel', is written over a horizontal line.

P. Kevin Castel
United States District Judge

Dated: New York, New York
April 17, 2009